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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,263	11/23/2001	Junji Shinohara	2038-281	2420

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/990,263

Applicant(s)

SHINOHARA ET AL.

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003 and 21 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-7,9,11,13,15 and 17 is/are rejected.
- 7) ☒ Claim(s) 4,8,12,14,16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/21/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 2-17 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claim 2, 3, 5-7, 9, 11, 13, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fujioka EP 0692233 A1 in view of Pfeifer et al. USPN 5779689.

As to claim 2, Fujioka discloses a disposable undergarment comprising a front waist region **6**, a rear waist region **7**, and a crotch region **8** (Figure 7). The crotch region has transversely opposite side edges curving inward transversely to define peripheral edges of leg-openings (Figure 7). The garment further comprises first and second elastic members, **15** and **16**, respectively.

Each of the end portions of the first elastic member **15** extends along a front end portion of one of the transversely opposite side edges of the crotch region, and the middle portion of elastic member **15** extends across the crotch region (Figure 7). Each of the end portions of the second elastic member **16** extends along a front end portion of one of the transversely opposite side edges of the crotch region, and the middle portion of elastic member **16** extends across the crotch region (Figure 7). Elastic members **15** and **16** are completely spaced apart in a longitudinal direction of the undergarment without contacting or crossing each other (Figure 7).

The article further comprises a pair of third elastic members **17** each extending along one of the transversely opposite side edges of the crotch region. Each of the third elastic members **17** has a front portion extending alongside at least a part of one of the

end portions of the first elastic member **15**, and a rear portion extending alongside at least a part of one of the end portions of the second elastic member **16** (Figure 7).

Fujioka does not disclose the third elastic members are curved inwardly transversely of the undergarment. Pfeifer discloses a disposable garment having indentations in the crotch region and having a concave curved outline and an inwardly running set of curved elastic strands placed in a highly stretched state, the outermost strand of which is arranged close to the outline of the indentation for the benefit of ensuring suitable leak proofing against the risks of transverse leakages from the absorbent pad at this spot (FIG. 5a and col. 7, lines 45-52). It would have been obvious to one having ordinary skill in the art to modify the third elastic member of Fujioka with curved elastic for the benefits disclosed in Pfeifer.

Fujioka does not specifically disclose a tensile stress of overlapping zones where the first, second, and third elastic member extend alongside each other is higher than that of non-overlapping zones. However, Fujioka discloses the first and second elastic members provide tension in the front and rear halves of the leg holes (col. 2, lines 38-45 and col. 7, lines 22-32), and as shown in Figure 7, this tension would be more in a lateral direction according to the placement of the elastic member **15** and **16**. Members **17** provide tension in a longitudinal direction, even if curved. Therefore, the examiner has reasonable factual basis to conclude the overlapping region including members **15** and **17** or **16** and **17** would have a higher tensile stress than non-overlapping regions as

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the overlapping regions include more elastic strands and tension in more than one direction.

As to claim 3, Fujioka/Pfeifer further discloses a liquid-pervious topsheet **11**, a liquid-impervious backsheet **12**, and a liquid-absorbent core **13** disposed between the topsheet and backsheet.

As to claim 5, see Fujioka col. 7, 9-12.

As to claim 6, Fujioka/Pfeifer discloses the elastics **15** and **16** can be attached to the topsheet and elastic **17** can be attached to the back sheet or vice versa (Fujioka col. 7, lines 9-16). Therefore, the elastics **15** and **16** would not be co-elevational with the elastic **17** as viewed in a thickness direction.

As to claim 7, applicant has not defined an entire area of the topsheet. Therefore, one can interpret an entire area to be any area within the topsheet. For example an entire area of the front region of the topsheet meets the limitation of being smaller than the backsheet.

As to claim 9, see Fujioka, Figure 7.

As to claim 11, see Pfeifer, Figure 5a.

As to claim 13, see Fujioka/Pfeifer discloses the elastics are attached to the backsheet (Fujioka col. 7, lines 9-12).

As to claim 15, see Figure 7.

As to claim 17, Fujioka/Pfeifer discloses the elastics **15** and **16** can be attached to the topsheet and elastic **17** can be attached to the back sheet or vice versa (Fujioka col. 7, lines 9-16). Therefore, the overlapping zones of the elastics include a sheet material (absorbent core) separating the elastics **15** and **16** from the elastic **17**.

#### ***Allowable Subject Matter***

5. Claims 4, 8, 10, 12, 14, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jacqueline F Stephens  
Examiner  
Art Unit 3761



March 28, 2004



JOHN S. CALVERT  
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